

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA
NORTHEASTERN DIVISION

Patrick E. Miller,

Plaintiff,

-vs-

Social Security Administration
Commissioner, Michael J. Astrue,

Defendant.

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Case No. 2:10-cv-41

**ORDER ADOPTING REPORT AND
RECOMMENDATION**

Plaintiff commenced this action seeking judicial review of the final decision of the Social Security Commissioner denying his application for disability insurance benefits and for supplemental security income. The Court has received a Report and Recommendation from the Honorable Karen K. Klein, United States Magistrate Judge, pursuant to 28 U.S.C. § 636, recommending that this case be remanded to the Social Security Administration for further proceedings (Doc. #29). Defendant timely filed objections to the Report and Recommendation, asserting substantial evidence supports the Commissioner's final decision and there is no legal error because the Administrative Law Judge ("ALJ") expressly considered the effects of Plaintiff's obesity in determining whether he was disabled. Plaintiff responded to the objections (Doc. #31).

The Court has conducted a *de novo* review of the administrative record and the pleadings filed in this action. After carefully considering the entire record, the Court agrees that the ALJ failed to properly consider claimant's morbid obesity and thus this case should be remanded to the Social Security Administration for further proceedings. The Court hereby adopts the Report and Recommendation in its entirety. For the reasons set forth therein, Plaintiff's motion for summary judgment (Doc. #16) is **DENIED**; Plaintiff's motion for remand is **GRANTED** (Doc. #19); and

Defendant's motion for summary judgment is **DENIED** (Doc. #22).

IT IS HEREBY ORDERED that this case be remanded to the Social Security Commissioner for further proceedings.

IT IS SO ORDERED.

LET JUDGMENT BE ENTERED ACCORDINGLY.

Dated this 5th day of August, 2011.

/s/ Ralph R. Erickson
Ralph R. Erickson, Chief Judge
United States District Court